

## Other Types of Deeds

**Personal Representative Deed**--deed from the PR of the estate to the person or entity entitled to transfer of the property.

**Warranty Deed**--deed that warrants clear title.

**Quitclaim Deed**--deed that conveys whatever interest the grantor has, if any, in a property (quitclaim deeds do not warrant clear title).

**Transfer on Death Deed**--new type of deed that provides for the transfer of title only upon the death of the grantor. To be valid, it must be recorded with the County Clerk's Office prior to your death. **Does not require probate.**

**The most common types of deeds for jointly held property are:**

**Joint Tenancy**--also known as Joint Tenancy with Rights of Survivorship (JTWROS). Each owner has an identical and simultaneous interest in the property with the same right of possession. If one owner dies, his or her share passes to the surviving joint tenant (not his heirs or devisees).

**If real property is held in Joint Tenancy, a probate is usually unnecessary when the first joint tenant dies. The surviving joint tenant should record a copy of the Death Certificate in the County Clerk's office in every county where real property is located.**

**Tenancy in Common**--a deed conveying an equal and undivided interest, but with no rights of survivorship (property passes to the heirs/devisees of each of the tenants in common).

## OTHER FORMS OF PROPERTY TRANSFER

**Homestead Affidavit**—a notarized statement that can only be used to transfer the marital residence, subject to certain valuation limits, to a

surviving spouse without a court probate. Affidavit is recorded with the County Clerk's office and **does not require probate.**

**Disclaimer**--you can disclaim an interest in property. Some of the requirements are that the disclaimer be in writing and that it be recorded with the County Clerk, filed with the Probate or District Court, and delivered to the PR.

## Help?

You can buy deed forms from office supply stores and at various Internet sites. **Be sure you know which deed you need, the consequences of using that deed, and that it is properly filled out and recorded.** Having an attorney prepare or review the deed can save headaches later on.

**The Court can provide information and Probate Court forms, but cannot provide legal advice, legal services, or other forms.**

## Contact Info:

### **Bernalillo County Probate Court**

One Civic Plaza NW, 6<sup>th</sup> Floor  
Albuquerque NM 87102  
Telephone: 505-468-1233/505-468-1234  
Fax: 505-468-1298  
[www.bernco.gov/probate\\_judge/](http://www.bernco.gov/probate_judge/)

**Bernalillo County Clerk:** (505) 468-1290  
[clerk@bernco.gov](mailto:clerk@bernco.gov)  
**Bernalillo County Treasurer:** (505) 768-4031  
[treas@bernco.gov](mailto:treas@bernco.gov)  
**Bernalillo County Assessor:** (505) 222-3700  
[assessor@bernco.gov](mailto:assessor@bernco.gov)

### **Second Judicial District Court**

P.O. Box 488  
Albuquerque NM 87103  
Telephone: 505-841-7451  
Fax: 505-841-7495



(We know saguaros do not grow in NM.)

## **REAL PROPERTY AS PART OF PROBATE CASES IN NEW MEXICO**

**Bernalillo County Probate Court**  
Court of Wills, Estates & Probate  
[www.bernco.gov/probate\\_judge/](http://www.bernco.gov/probate_judge/)

In general, **real property** is land or anything built or growing on it, including houses, farms, ranches, leases, gas, mineral, water, and timber rights.

This is a brief overview of New Mexico's rules regarding real property. Please consult an attorney for further assistance or if you need help completing a deed.

Transferring real property is a common reason for filing a probate. Real property titled in the sole name of the decedent or as "tenants in common" generally cannot be transferred without the court appointment of a **personal representative** ("PR") with the legal authority to act on behalf of the estate.

The Probate Court can only be used for simple proceedings. If a question arises

about the heirs of the estate, who is entitled to the property, or the value of the property, the proceeding must be filed in the District Court.

### **Personal Representative's Deed**

A PR appointed informally by the Probate or District Court has legal authority to sell real property and to transfer title to it via a "Personal Representative's Deed" from the estate to the new owner(s). It is the PR's job to have this deed prepared, signed, acknowledged before a notary public, and properly recorded. Filing a copy of the deed in the court case file is optional.

Deeds from PRs to themselves are voidable without the written consent of any person with an interest in the estate. Title companies sometimes also require a court order allowing the transfer.

**★ The general rule is that change of title to real property (i.e., the deed) must be recorded in the clerk's office of the county of the state where each piece of real property is located.**

### **Probate Opened in Bernalillo County, with Real Property Located in New Mexico, but Outside of Bernalillo County**

If real property of an estate is located in a county in New Mexico other than where the probate was opened, the PR of the estate must record with the county clerk of

the county where the property is located, a **Notice Of Administration** setting forth:

- (1) Name of the decedent;
- (2) Caption and docket number of the probate proceedings;
- (3) Type of administration; i.e., formal, informal, supervised
- (4) Court where the probate is filed;
- (5) Name, address, and title of the PR; and,
- (6) Complete legal description of the real property located in that county.

Although not required, it is a good idea to file a copy of this Notice with the Court where the probate was commenced.

### **Real Property Located Outside of New Mexico**

If the estate involves real property located outside of New Mexico, you may need to file a separate probate in the county in the state where the property is located. These are sometimes called **Ancillary Probates**. Contact the court in the state where the property is located for more information on how to proceed.

### **Person Resided in Another State but Owned Real Property in New Mexico**

Sometimes a person who lived in another state dies owning real property in New Mexico. If no administration has been started in that state, an original probate

proceeding can be started in New Mexico by filing a probate case directly in the county where the real property is located.

If a probate proceeding has already been started in another state, the PR must obtain authority to act in New Mexico by:

1) Filing a **Proof of Authority** with the Probate Court (or District Court) in the county where the property was located so that they can transfer any property of the estate located in that county; **or**

2) Filing an **Ancillary Probate** which, although similar to a "proof of authority", requires opening a full probate proceeding, where "letters testamentary" or "letters of administration" are issued to the PR.

You may need to consult an attorney for assistance with these matters.

### **Time Limits**

In general, probate proceedings are not allowed more than three (3) years after a person's death. There is an exception for transferring property of the estate. The PR appointed for this purpose does not have the same powers and authority as a PR who has been appointed within three years of a person's death. The PR cannot possess estate assets except to confer title to the property. (Determinations of heirship actions, however, can be filed in the District Court at anytime after the decedent's death.)